UNITED STATES
v.
SCHNEIDER MINERALS, INC.
AND
AQUA PURA, INC.

IBLA 76-755 Decided August 3, 1978

Appeal from decision of Administrative Law Judge John R. Rampton, Jr., finding a valuable locatable mineral deposit on the Southerner placer mining claim, NM 258, and dismissing the contest complaint.

Affirmed.

1. Mining Claims: Common Varieties of Minerals: Generally

   Whether a deposit of clay is a common variety and no longer locatable under the mining laws since the Act of July 23, 1955, or is still locatable depends on whether it has a unique property giving it a special and distinct value.

2. Mining Claims: Common Varieties of Minerals: Unique Property -- Mining Claims: Common Varieties of Minerals: Special Value

   A clay's unique properties -- superior bonding characteristics, high brilliance and low impurity content -- which make it particularly suitable for use in the paper coating and ceramics industries, impart a special and distinct value to the clay through the generation of profits in excess of those which could be realized from a deposit of a common variety of the material.

APPEARANCES: Demetrie L. Augustinos, Esq., Office of the General Counsel, U.S. Department of Agriculture, Albuquerque, New Mexico, for appellant; Harold M. Morgan, Esq., Albuquerque, New Mexico, for appellees.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

The Department of Agriculture (contestant) has appealed from the July 15, 1976, decision of Administrative Law Judge John R. Rampton, Jr., holding that a unique and valuable mineral, kaolinite clay, had been located on the Southerner placer mining claim situated in secs. 15 and 16, T. 10 S., R. 10 W., New Mexico principal meridian of the Gila National Forest, Sierra County, New Mexico. The claim, comprising an area of 160 acres, was located as an association placer on October 19, 1952, by eight persons of the Schneider Minerals Corporation. By quitclaim deeds dated on or about July 9, 1955, all eight individuals by mesne conveyances transferred their interests to Schneider Minerals, Incorporated.

The contest was initiated on September 19, 1969, when the Bureau of Land Management, at the request of the Forest Service, Department of Agriculture, filed a complaint charging that:

(a) A valid mineral discovery as required by the mining laws of the United States does not exist within the limits of the Southerner;

(b) The land embraced within said placer mining claim is nonmineral in character within the meaning of the mining laws;

(c) The material found within the limits of said placer mining claim is not a valuable mineral deposit under 30 U.S.C. § 611;

(d) The contestee is entitled to hold under the location only a 20-acre claim; the additional 140 acres are excessive under the mining laws.

On August 4, 1971, Aqua Pura, Inc., a successor in interest to Schneider Minerals, Inc., entered the contest as an intervenor. Evidentiary hearings were held on May 15, 1973, and on November 19, 1974, in Albuquerque, New Mexico.

The Judge dismissed that part of the complaint charging that contestees were entitled to hold under the location only a 20-acre, not a 160-acre claim. He found, having concisely evaluated all the evidence presented in light of the applicable mining law, the clay from the Southerner claim was unique because:

1. Its bonding characteristics are superior to those clays now used in the paper industry.

2. Without removal of impurities, it has a higher brilliance and a more desirable bluish cast than the clays now used in the paper industry.

3. It has a low grit residue (.006 percent) which indicates that it is possible to disperse the clay easily and the impurities can be separated and removed by sedimentation procedures * * *, making it easy to separate the different constituents into a number of marketable products. * * *

4. It contains little montmorilonite, which increases its suitability for use as a paper coating. * * *

(Decision, p. 16.)

The Judge further found from the unrebutted evidence that clay from the Southerner claim could be used in the ceramics industry for making whiteware.

With respect to marketability of the deposit, the Judge found from the estimates given by contestees' witnesses that a market existed for the clay and that contestees had a reasonable chance to develop that market. These estimates were as follows:

Nature of expense	Cost per ton	Page 1/
Extraction	$1.00 - 3.00	37
Loading, shipping	20.00	41
Processing	6.00	41
	$ 29.00	42

At a market price of $59 per ton, the profit would be approximately $30 per ton (Decision, p. 10). 2/

Appellant contends that the Judge erred in dismissing that portion of the complaint relating to excess acreage. Appellant also

1/ References are to the deposition of Dr. Arman F. Frederickson, consulting geologist and engineer, who testified on behalf of contestees. 2/ Inadvertently stated to be $20 per ton, page 10 of the Judge's decision due to arithmetical error.

contends that the clay in question is neither unique nor possessed of distinct and special values for use in the paper industry and ceramics. Appellant asserts that the Judge's premise that the clay is not a common variety if it can be sold at a profit for these uses is erroneous as a matter of law. It further argues that the Judge erred in evaluating the evidence presented on the question of marketability and in concluding that the clay could be sold at a profit.

The Judge gave the following rationale for dismissing that portion of the complaint relating to excess acreage:

> The contestant based its entire case upon the proposition that the clay on the Southerner placer was a common variety no longer locatable after the passage of the Act of July 23, 1955, and that no discovery had been perfected either prior to or after the date of said Act. The contestant made no attempt to elicit information as to work done on the claim prior to its acquisition by the corporation. Except for the complaint and answer, the record, including the briefs filed by the parties, is silent on this issue.
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> I do not feel that a third session to take further evidence would be justified. The contestant has had ample opportunity to cross-examine the contestee's and intervenor's witnesses and has either failed or chosen not to do so. The contestant bears the minimal initial burden of presenting a prima facie case in support of all of the allegations of its complaint. Allegation 5(d) is therefore dismissed.

On appeal to this Board, appellant has shown no reason to disturb this conclusion.

[1, 2] In view of the record herein we cannot agree with appellants' remaining assignments of error. The Judge reached his conclusions concerning the uniqueness of the clay by evaluating appellees' unrebutted expert testimony. No witnesses testified on behalf of appellant to challenge the properties attributed to the clay, nor the figures relating to extraction, processing, shipping and marketing. One of the criteria of United States v. McClarty, 17 IBLA 20, 81 I.D. 472 (1974), is that a special economic value of a mineral may be reflected by reduced costs or overhead so that the profit to the producer would be substantially more while the retail market price would remain competitive with other sources of the same material. In other words, the unique properties of a mineral, which reduce costs of extraction and processing, may impart a special and distinct value to such a mineral through the generation of profits

in excess of those which could be realized from a common variety of the same mineral. The evidence upon which the Judge's conclusions are based, demonstrates that the clay's unique properties, supra, impart a special and distinct value to the clay for use in the paper coating and ceramic industries, through reduced costs of extraction and processing. (See Frederickson Deposition, pp. 38-41.) See United States v. Thomas J. Peck, 29 IBLA 357, 84 I.D. 137 (1977).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge